

## Internal Revenue Service

## Department of the Treasury

Number: **200242015**  
Release Date: 10/18/2002  
Index Number: 9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-117383-02

Date:

July 17, 2002

X =

Sub =

D1 =

D2 =

Dear :

This letter responds to a letter dated November 5, 2001, and subsequent correspondence, written on behalf of X, requesting that the Service grant X an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to elect to treat Sub as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3) of the Internal Revenue Code.

The information submitted states that X is a corporation that elected to be an S corporation effective D1. Sub is wholly-owned by X and was incorporated on D1. X represents that X intended to treat Sub as a QSub effective D2. However, X inadvertently failed to timely file the proper election.

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" (QSub) as a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by the S corporation, and the S corporation elects to treat the corporation as a QSub. The statutory provision does not, however, provide guidance on the manner in which the QSub election is made or on the effective date of the election.

A taxpayer makes a QSub election with respect to a subsidiary by filing a Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center. The election may be effective on the date the Form 8869 is filed or up to 75 days prior to the filing of the form, provided that the subsidiary otherwise qualifies as a QSub for

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the entire period for which the retroactive relief is in effect. If a valid QSub election is made, the subsidiary is not treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of the QSub are treated as assets, liabilities, and items of income, deduction, and credit of the parent S corporation.

Under section 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except E, G, H, and I. Requests for relief under section 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a). Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions, of time for making elections that do not meet the requirements of § 301-9100-2.

Based solely on the facts and the representations submitted, we conclude that the requirements of 301.9100-3 have been satisfied. As a result, X is granted an extension of time for 60 days from the date of this letter to file a Form 8869 to elect to treat Sub as a QSub effective D2. A copy of this letter should be attached to the election.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is a valid S corporation or whether Sub is otherwise a valid QSub for federal tax purposes.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely yours,  
William P. O'Shea  
Acting Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: 2

Copy of this letter

Copy for § 6110 purposes